

FOR THE PETITIONER, PRO SE  
Justin L. Talkington  
Dyer, Indiana

ATTORNEY FOR RESPONDENT  
Kraig Kinney  
Indiana Department of Homeland Security  
Indianapolis, Indiana

**STATE OF INDIANA  
BEFORE THE EMERGENCY MEDICAL  
SERVICES COMMISSION**

IN RE:

Talkington, J.

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CAUSE NO.

DHS-1750-EMSC-005

' FILED

**MAY 31 2018**

SPECIAL SERVICES  
ALJ

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER**

Petitioner in this matter, Justin Talkington, appeals the revocation of his Paramedic License and Emergency Medical Technician ("EMT") Certificate for a period of seven (7) years by Respondent, the Indiana Department of Homeland Security ("IDHS"). For the reasons set forth below, the Administrative Law Judge ("ALJ") **AFFIRMS** the decision of the IDHS.

**PROCEDURAL BACKGROUND**

On November 20, 2017, Respondent issued an order revoking Petitioner's Paramedic License and his EMT Certificate for a period of seven (7) years. On December 6, 2017, Petitioner filed a petition for administrative review of this action pursuant to Indiana Code § 4-21.5-3-7. His petition was granted, and this matter was subsequently assigned to the undersigned ALJ for adjudication.<sup>1</sup>

An initial prehearing conference was held January 24, 2017. Petitioner appeared on his own behalf, and Kraig Kinney appeared on behalf of the Respondent. During the initial prehearing conference, the parties advised the ALJ that informal resolution would not be possible

<sup>1</sup> The original ALJ assigned to this case took a leave of absence, and the current ALJ has been substituted, pursuant to the authority of Indiana Code § 4-21.5-3-27(e).

in this case and requested a hearing. The ALJ approved of this form of proceeding and set a briefing schedule.

On March 12, 2018, the parties submitted a joint motion entitled “Agreement of the Parties.” On March 23, 2018, the ALJ conducted a hearing at which evidence was presented and argument heard. On March 23, 2018, the ALJ issued its “Order On Hearing and Order Setting Briefing Schedule.” Pursuant to the ALJ’s acceptance of the parties’ joint motion entitled “Agreement of the Parties,” the sole issue is whether the sanctions Respondent seeks to impose upon Petitioner are appropriate. The ALJ ordered that the parties file proposed findings of fact and conclusions of law on or before Monday, April 23, 2018.

Respondent submitted “Respondent’s Proposed Findings Of Fact And Conclusions Of Law” on April 6, 2018. Petitioner submitted his “Proposed Findings Of Fact And Conclusions Of Law” on April 23, 2018. This Findings Of Fact, Conclusions Of Law, And Non-Final Order now follows.

### **BURDEN AND STANDARDS OF PROOF**

Indiana Code § 4-21.5-3-14(c) provides that at each stage of an administrative review, “the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense.” That burden rests upon the agency when the agency is, in essence, prosecuting a petitioner for a regulatory violation. *See Peabody Coal Co. v. Ralston*, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). But when it is the petitioner who has sought an agency action or claimed entitlement to an exemption from regulatory requirements, the burden rests upon that petitioner. *See Ind. Dep’t of Natural Res. v. Krantz Bros. Constr. Corp.*, 581 N.E.2d 935, 938 (Ind. Ct. App. 1991).

Proceedings held before an ALJ are de novo pursuant to Indiana Code § 4-21.5-3-14(d), which means the ALJ does not—and may not—defer to an agency’s initial determination. *Ind. Dep’t of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as fact-finder the ALJ must independently weigh the evidence in the record and matters

officially noticed, and may base its findings and conclusions only upon that record. *Id.*; *see also* Ind. Code § 4-21.5-3-27(d).

At a minimum, the ALJ's findings "must be based upon the kind of evidence that is substantial and reliable." Ind. Code § 4-21.5-3-27(d). The appellate courts have provided more guidance. When a Fourteenth Amendment interest is put at risk by an agency action, a higher standard of proof is required. *Pendleton v. McCarty*, 747 N.E.2d 56, 64-65 (Ind. Ct. App. 2001), *trans. denied*. "[I]n cases involving the potential deprivation of ... protected property interests, the familiar 'preponderance of the evidence standard' [is] used." *Id.* at 64. But the higher "clear and convincing" standard is required when a protected liberty interest is at stake. *Id.* That is to say, this standard applies when "individual interests at stake in a particular state proceeding are both 'particularly important' and 'more substantial than the mere loss of money' or necessary to preserve fundamental fairness in a government-initiated proceeding that threaten[s] an individual with 'a significant deprivation of liberty' or 'stigma.'" *Burke v. City of Anderson*, 612 N.E.2d 559, 565 (Ind. Ct. App. 1993) (quoting *In re Moore*, 453 N.E.2d 971, 972 (Ind. 1983)), *trans. denied*; *see also, Pendleton*, 747 N.E.2d at 64.

### **FINDINGS OF FACT**

Present in the record of proceedings is Respondent's November 20, 2017 order revoking both Petitioner's Paramedic License and his EMT Certificate for a period of seven (7) years. Petitioner's request for administrative review, Respondent's letter granting the appeal as timely, and the orders and notices issued by the ALJ are also present in the record.

Also in the record are the parties' joint motion of March 12, 2018, entitled "Agreement of the Parties." At the hearing, the parties submitted "Joint Exhibit 1," which was admitted into evidence as "Joint Exhibit 1."

Both parties submitted testimonial evidence at the March 23, 2018 hearing. Based solely on the evidentiary record presented by those exhibits, those matters officially noticed, and the record made at the evidentiary hearing, the ALJ hereby makes the following Ultimate Finding of Fact:

1. Petitioner holds an EMT Certificate and a Paramedic License, both of which have an expiration date of March 31, 2018 (Agreement of the Parties). Both are regulated by the Indiana Emergency Medical Services (“EMS”) Commission and Indiana Department of Homeland Security (the agency supporting the EMS Commission).
2. Petitioner has been previously sanctioned by the Indiana Department of Homeland Security under Cause Number 0034-2014 with an Amended Findings and Order issued on December 24, 2014, that resulted in a one-year suspension of privileges from May 30, 2014, through May 29, 2015. The prior disciplinary sanction was related to the veracity and accuracy of re-certification paperwork (Joint Exh. 1, Item 10).
3. Until recently, Petitioner worked for Elite Ambulance Service (Agreement of the Parties; Joint Exh. 1, Item 1). On July 19, 2017, Petitioner was assigned to be on duty with Elite Ambulance in the Hammond area from 9 a.m. to 9 p.m. (Agreement of the Parties; Joint Exh. 1, Item 1).
4. At approximately 2100 hours on the night of July 18, 2017, Petitioner began to consume beer, and by approximately 0700 hours of July 19, 2017, he had consumed approximately twenty (20) sixteen (16) ounce cans of beer (Joint Exh. 1, Item 5).
5. At approximately 9:50 a.m. on July 19, 2018, Petitioner’s crew responded emergent to a call with Petitioner as the passenger and taking a short nap en route (Agreement of the Parties; Joint Exh. 1, Items 1, 3).
6. Petitioner’s EMT partner Terri Allison cared for the patient in the rear compartment as Petitioner drove the ambulance to St. Mary’s Hospital. Petitioner passed the entrance to St. Mary’s Hospital (Agreement of the Parties; Joint Exh. 1, Item 2).
7. Petitioner admitted in an email to investigators that “I had been texting and driving instead of watching the road” during the call (Agreement of the Parties; Joint Exh. 1, Item 3).
8. Petitioner also acknowledges that he was aware that texting and driving was against company policy, as reflected in his signed acknowledgment of receipt of the “Elite Ambulance Text Messaging and Cell Phone Use While Driving Policy” and the Elite Ambulance Employee Handbook Acknowledgment and Receipt executed by Petitioner (Agreement of the Parties; Joint Exh. 1, Items 3, 6, 7, 8).
9. After completing the run and preparing the ambulance for the next run Petitioner stated that that “I should lie down for some rest” and did so (Agreement of the Parties).

10. Allison noted a smell of alcohol about Petitioner and reported to her supervisor that Petitioner had gotten lost on the way to St. Mary's Hospital. Allison also noted that she did not feel safe, and told her supervisor that she thought Petitioner "may still be drunk" (Agreement of the Parties).
11. Allison woke Petitioner and advised him that he had been ordered for a drug/alcohol screen by their employer (Agreement of the Parties).
12. Petitioner's blood alcohol content ("BAC"), as tested by Physician's Urgent Care on July 19, 2017, via a breathalyzer was 0.12% BAC at 1334 hours and 0.085% BAC at 1351 hours (Agreement of the Parties; Joint Exh. 1, Item 2).
13. Petitioner admitted that he drank excessive amounts of alcohol the night before coming on shift on July 19, 2017. Petitioner also admitted that he had gotten just an hour or two of sleep before his shift. Petitioner denies drinking while on duty (Agreement of the Parties).
14. Petitioner admitted to EMS Commission Certification and Compliance Section Chief Candice Pope that a secondary reason for offering to drive the ambulance was that he had concerns about performing ALS care in his condition (Agreement of the Parties).
15. Petitioner admitted that due to the factors of being tired, being distracted by texting, and driving the ambulance under the influence of alcohol, that Petitioner was impaired at the time of the ambulance transport (Agreement of the Parties). Petitioner acknowledges that he was aware that working while impaired was against company policy, as reflected and the Elite Ambulance Employee Handbook Acknowledgment and Receipt executed by Petitioner (Agreement of the Parties; Joint Exh. 1, Items 3, 6).
16. Petitioner resigned his employment with Elite Ambulance Service on July 21, 2017, by email (Joint Exh. 1, Item 1).
17. At the hearing, Petitioner admitted that he is an alcoholic. He explained that his employer, Elite Ambulance Service, had accommodated his consumption habits. Previously, Elite Ambulance Service had assigned him to two twenty-four hour shifts on Wednesday and Sunday, but the employer shifted his assignment due to the fact that Petitioner persisted in calling off work on Sunday.
18. Petitioner admitted he is well aware of his problem with alcohol. He has attended both closed and open Alcoholics Anonymous meetings recently, as often as once a week. Petitioner does

not currently have a sponsor and is reluctant to seek one after a bad experience with a prior sponsor.

19. Petitioner had a charge of public intoxication in 2010 (Joint Exh. 1, Item 5).
20. Petitioner was charged with operating a vehicle while intoxicated in March 2017. The charges resulted in a conviction for Reckless Driving in June 2017 (Joint Exh. 1, Item 5).
21. Petitioner testified that he participated in counseling with Licensed Clinical Social Worker Tom Dworniczek as a result of his charge of operating a vehicle while intoxicated in March 2017. As of February 10, 2018, Mr. Dworniczek reported that Petitioner had been formally discharged on November 26, 2017, although Mr. Dworniczek had recommended monthly sessions. At the time of his discharge, Mr. Dworniczek believed Petitioner's abstinence was intact and that Petitioner was regularly attending Alcoholics Anonymous meetings (Joint Exh. 1, Item 11).
22. EMS Commission Certification and Compliance Section Chief Candice Pope testified she spoke with Mr. Dworniczek as part of her assistance with Petitioner's case. Mr. Dworniczek told her that Petitioner was referred to him by the courts and was compliant with his treatment. Mr. Dworniczek told her that he believed that "triggers" existed that might cause Petitioner to drink again but that he believed they would originate from Petitioner's life and relationships, and were not related to his employment. Mr. Dworniczek told Ms. Pope that he had suggested that Petitioner step away from his emergency medical services work until he achieved one year of sobriety. Mr. Dworniczek told Ms. Pope that he believed Petitioner to be unstable in his sobriety and it was not a good idea for him to provide emergency medical services at the time they spoke. Mr. Dworniczek also noted that he could not get a call back from Petitioner at that time and had done enough for Petitioner at that time.
23. John Messinio, a friend of Petitioner's from Alcoholics Anonymous meetings, indicated that as of February 13, 2018, Petitioner had shown an obvious interest in recovery and in doing what was necessary to stay sober one day at a time and that Petitioner was growing in recovery and growing in the spiritual principles necessary for continued sobriety.
24. At the hearing, State EMS Commission Medical Director Dr. Michael Kaufmann testified that any amount of alcohol consumed can lead to cognitive impairment. How much and how apparent the impairment is will vary by the individual. However, effects such as delayed reaction time can be apparent at levels well below the legal limit for driving, 0.08% BAC.

25. Dr. Kaufman testified that by working while impaired, Petitioner endangered his patient, his crew, himself, all persons encountered on the run, and all property encountered on the run.
26. Dr. Kaufmann testified that as alcohol is processed by the body, Petitioner's blood alcohol content would have necessarily been higher at the time he did the transport than at the time of his testing.

### CONCLUSIONS OF LAW

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following Conclusions of Law with respect to the issues presented:

1. Respondent in this matter seeks to impose a sanction upon the Petitioner by permanently revoking Petitioner's Paramedic License and his EMT Certificate. The Respondent, therefore, bears the initial burdens of proof and production. Ind. Code § 4-21.5-3-14(c); *Peabody Coal*, 578 N.E.2d at 754.
2. Petitioner has a protected property interest in his Paramedic License, and his EMT Certificate, as he must possess these licenses and certifications in order to be employed as a paramedic and EMT. *Melton v. Indiana Athletic Trainers Bd.*, 53 N.E.3d 1210, 1215-16 (Ind. Ct. App. 2016). Therefore, the Respondent must demonstrate by a preponderance of the evidence that the discipline imposed upon Petitioner is appropriate. *Pendleton*, 747 N.E.2d at 64-65.
3. The Indiana Emergency Medical Services Commission is created by statute, Indiana Code § 16-31-2-1, and is empowered to "[d]evelop training and certification standards for emergency medical responders" and "[r]equire emergency medical responders to be certified" under those standards, Indiana Code § 16-31-2-8(1), -8(2). *See also* Ind. Code § 16-31-2-7(2) (EMS Commission charged to "[r]egulate, inspect, and certify or license services, facilities, and personnel engaged in providing emergency medical services").
4. The EMS Commission is also charged with establishing the standards for certification and licensing for emergency medical responders, Indiana Code § 16-31-3-2, and set forth those standards for education and training in rules, Indiana Code § 16-31-3-2(1)(A). It is also charged with establishing the application process for certification and licensure as an emergency medical responder. Ind. Code § 16-31-3-8.

5. Indiana Code § 16-31-3-14(a) permits the Respondent to impose sanctions on a certificate or license holder if the Respondent can show that, among other things, the certificate or license holder “fails to comply and maintain compliance with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article” or continues to practice if the certificate holder or the license holder becomes unfit to practice due to:...(D) addiction to, abuse of, dependency on alcohol or other drugs that endanger the public by impairing the certificate holder’s or license holder’s ability to practice safely.” Ind. Code § 16-31-3-14(a)(7), (8)(D).
6. 836 IAC 4-4-1(e)(2) states that an “emergency medical technician shall not act negligently, recklessly, or in such a manner that endangers the health or safety of emergency patients or the members of the general public.”
7. 836 IAC 4-9-3(e)(2) states that “[P]aramedics shall...not act negligently, recklessly, or in such a manner that endangers the health or safety of emergency patients or the members of the general public.”
8. Both parties agree with the determination of the ISHS that finds that Respondent has violated the requirements of Indiana Code Article 16-31, specifically, but not limited to, Indiana Code § 16-31-3-14(a)(7) and (a)(8) for practicing under the influence of alcohol, being unfit while working, and acting in such a manner that endangered the health or safety of emergency patients, his co-workers, and members of the general public.<sup>2</sup>

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<sup>2</sup> Respondent, in its proposed findings of fact and conclusions of law, indicates that Indiana Code § 16-31-3-14(a)(5) permits Respondent to impose sanctions on a certificate or license holder if Respondent can show that, among other things, the certificate or license holder “is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder or license holder should be entrusted to provide emergency medical services.” Respondent points out that Petitioner’s conviction for misdemeanor Reckless Driving, a conviction based on driving while impaired, which encompasses both reckless behavior that creates a risk to the public and relates to work as an ambulance driver, it is directly related to whether petitioner can be trusted to serve the public as an EMT and a paramedic. However, while the facts of the conviction were properly entered into evidence and will be considered as part of the case, the ALJ can find no indication in the record that Petitioner received notice that Respondent was considering advocating for an independent finding of a violation pursuant to Indiana Code § 16-31-3-14(a)(5). Instead, the Findings and Order of the IDHS of November 20, 2017, indicate that the IDHS found that Petitioner “violated the requirements of Indiana Code Article 16-31, specifically, but not limited to, IC 16-31-3-14(a)(7) and (a)(8), for practicing under the influence of drugs and alcohol and acting in such a manner that endangers the health or safety of emergency patients and members of the general public” Similarly, Respondent’s indication in its proposed finding of fact and conclusions of law that Petitioner’s actions constitute a violation of Indiana Code § 16-31-3-14(a)(7) because his conduct violated 836 IAC 4-9-3(e)(5), requiring paramedics to comply with the protocols established by the Commission, their provider

9. In addition, Petitioner's behavior in engaging in his work while under the influence of alcohol, texting while driving in knowing violation of his employer's policies forbidding such practices, and his reporting to work in a sleep deprived state, indicates he has violated 836 IAC 4-4-1(e)(2) and 836 IAC 4-9-3(e)(2).
10. Indiana Code § 16-31-3-14(b) permits Respondent to impose the following sanctions with respect to holders of certificates it has issued:
  - (1) Revocation of a certificate holder's certificate or license holder's license for a period not to exceed seven (7) years.
  - (2) Suspension of a certificate holder's certificate or license holder's license for a period not to exceed seven (7) years.
  - (3) Censure of a certificate holder or license holder.
  - (4) Issuance of a letter of reprimand.
  - (5) Assessment of a civil penalty against the certificate holder or license holder in accordance with the following:
    - (A) The civil penalty may not exceed five hundred dollars (\$500) per day per violation.
    - (B) If the certificate holder or license holder fails to pay the civil penalty within the time specified by the department of homeland security, the department of homeland security may suspend the certificate holder's certificate or license holder's license without additional proceedings.
  - (6) Placement of a certificate holder or license holder on probation status and requirement of the certificate holder or license holder to:
    - (A) report regularly to the department of homeland security upon the matters that are the basis of probation;

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organization, and the provider organization's medical director is also not supported by any indication that Petitioner was on notice that Respondent was considering advocating for an independent finding of a violation pursuant to of Indiana Code § 16-31-3-14(a)(7) because his conduct violated 836 IA 4-9-3(e)(5). While "[i]t is, of course, well settled that administrative pleadings are to be liberally construed and amended" *Indiana Office of Env'tl. Adjudication v. Kunz*, 714 N.E.2d 1190, 1195 (Ind. Ct. App. 1999) (citing *Brock v. Dow Chemical U.S.A.*, 801 F.2d 926, 930 (7th Cir.1986)), it is also true that Petitioner had a right to notice of the citations alleged against him. *Cf.*, *Kunz*, at 1195. *See also*, *Brock*, at 930 (holding that the administrative pleadings must be drafted with sufficient particularity to afford the responding party notice of the claims against them).

- (B) limit practice to those areas prescribed by the department of homeland security;
- (C) continue or renew professional education approved by the department of homeland security until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or
- (D) perform or refrain from performing any acts, including community restitution or service without compensation, that the department of homeland security considers appropriate to the public interest or to the rehabilitation or treatment of the certificate holder or license holder.

The department of homeland security may withdraw or modify this probation if the department of homeland security finds after a hearing that the deficiency that required disciplinary action is remedied or that changed circumstances warrant a modification of the order.

11. In order to satisfy its burden of proof and production in this matter, Respondent must show by a preponderance of the evidence that its action in revoking both Petitioner's Paramedic License and his EMT Certificate for a period of seven (7) years is the appropriate sanction for Petitioner's violation of Indiana Code § 16-31-3-14(a)(7) and (a)(8).
12. The mitigating factors that indicate towards a more lenient sanction are as follows: Petitioner has admitted his actions, and admitted the wrongness of his actions, has consistently admitted remorse, and has cooperated with the IDHS investigative process, contesting only the severity of the sanction originally imposed. Petitioner has admitted that he has a problem with alcohol, and that the events of July 2017 and its consequences have acted as a wake-up call, and he is taking positive steps towards rehabilitation by seeking help from Alcoholics Anonymous and a counselor. No patient was harmed when Petitioner practiced his profession while impaired.
13. A proposed aggravating factor is the fact that Petitioner has prior discipline on his record dating from December 2014, which resulted in a one-year suspension of privileges from May 30, 2014, through May 29, 2015. However, the prior disciplinary sanction was related to the veracity and accuracy of re-certification paperwork (Joint Exh. 1, Item 10). As the prior discipline was grounded in an entirely different behaviors, unrelated to the concerns spurring the current disciplinary action, the fact that Petitioner has a prior disciplinary action and sanction on his record will be accorded the bare minimum of weight as an aggravating factor.

14. A proposed aggravating factor is Petitioner was charged with operating a motor vehicle while intoxicated in March 2017. The charges resulted in a conviction for Reckless Driving in June 2017 (Joint Exh. 1, Item 5). No weight is being accorded to this aggravator due to the fact that Petitioner had not yet reported the conviction, as testimony indicated that the date for reporting the conviction was at the end of March 2018, and this fact was presented during the pendency of the disciplinary action. However, this aggravator will be accorded significant weight due to the fact that due that the charge for operating a motor vehicle happened in March 2017 and Petitioner had gone through the court system by the end of June 2017, well before the events of July 2017 that resulted in this disciplinary action. Petitioner had a clear warning that he was being irresponsible with regard to his ingestion of intoxicating substances, yet he persisted in this behavior.
15. Other aggravating factors that indicate towards a more severe sanction are those derived from the facts illustrated by the evidence and testimony about the events of July 18-19, 2017. Petitioner showed up for work still intoxicated after consuming an enormous quantity of beer and after only two hours sleep. After over four hours at work, his BAC still measured 0.12%, and it was still 0.085% approaching five hours after he reported for work, indicating that his blood alcohol was significantly higher at the time he reported for work. Any impairment is of concern in the medical services field, and Petitioner was still intoxicated and working on two hours sleep. Petitioner admitted he had concerns about his ability to perform advanced life support care in his condition—the very essence of his job—and chose to take the wheel instead. Petitioner was taking naps while on the job, smelled of alcohol, and was driving so erratically as to cause his colleague to report him to her supervisor as possibly intoxicated. Further, he admits that he was texting while driving, further distracting his senses already impaired by his excessive alcohol consumption. While it is uncontradicted that no patient was injured due to Petitioner's impairment, this was luck. Petitioner's crew member, Terri Allison, did not feel safe working with Petitioner that morning due to his impairment. By working while impaired, Petitioner endangered his patient, his crew, himself, all persons encountered on the run, and all property encountered on the run, as well as scaring his colleague. This is a very serious aggravating factor.
13. Petitioner admits that he was texting while driving, which is another aggravating factor indicating Petitioner's poor judgment with regard to his responsibilities arising from his

employment. Both texting and using a mobile phone while driving an ambulance was in violation of company policy, as was being intoxicated or generally impaired while on the job, which Petitioner knew, as evidenced by the fact that he had signed receipts acknowledging his receipt both Elite Ambulance's Employee Handbook and its Text Messaging and Cell Phone Use while Driving Policy. This display of poor judgment and lack of respect of the reasonable behavioral boundaries set by his employer is a very serious aggravating factor.

14. Further, it is an aggravating factor that Petitioner was so well known as erratic in his habits, that his employer had adjusted his work schedule to accommodate his alcohol-caused absenteeism. This indicates that Petitioner's substance abuse problem had already affected his employment. This is a very serious aggravating factor.
15. It is an aggravating factor that Petitioner's counselor, to whom Petitioner was referred by the court due to a charge of operating while intoxicated, indicated that Petitioner should not work as an emergency services provider until he achieved at least one year of successful sobriety. This is a serious aggravating factor.
16. The aggravating factors notably outweigh the mitigating factors and indicate a severe sanction is appropriate.
17. While there is apparently no case directly on point, it is apparent that the sanction of revocation for a period of seven years is reserved for licensees who have committed serious crimes. *See In re: Michael Schillings*, Cause No. 00-06M (licensee convicted of Sexual Battery committed against a 14 year old boy); *In re: Robert T. Kinzer*, Cause No. 0012-2011 (licensee convicted of child molesting); *In re: Andi. J Pence*, Cause No. 6804-5214 (licensee convicted of neglect of a dependent with serious bodily injury); *In re: Belinda Marrell*, Cause No. 10-05M (licensee convicted of robbery).
18. Further, serious violations that relate to conduct that occurred while on duty and related to the services provided has merited severe sanctions. While Petitioner has argued that his addiction is being treated and requests another chance to prove himself, Respondent has submitted a representative case of *In Re: James Rosenau*, Cause Number 04-04M. There, Rosenau, the EMS chief in a township fire department, held similar certification and licensure as Petitioner. *Id.* After irregularities were noticed regarding pain killing controlled substances, specifically morphine and Valium, Rosenau underwent a drug test which showed recent Valium use. *Id.* An investigation revealed that 400 syringes of morphine and 65 syringes of Valium were

unaccounted for over approximately one year's time. *Id.* During the course of the investigation, it was revealed that Rosenau used his position to conceal his diversion by responding to a pharmacy inquiry as to the increased usage of these drugs himself and blaming a change in protocols, without disclosing the pharmacy's inquiry to his fire chief of the township trustee. *Id.* Rosenau was initially deceptive in his dealing with the department's investigation, but later admitted an addiction and his diversion, and sought treatment for his addiction. *Id.* The ALJ in that decision held that the "EMSC has consistently found that drug abuse which is extensive and continuing over a lengthy period and committed as a result of being a certificate holder negates any mitigating conduct. The only times the EMSC has imposed lesser penalties for drug abuse matters were in cases where the certificate holder was not using his position in the EMS community and there was no evidence of continuing conduct." *Id.* The ALJ upheld the revocation of Rosenau's Paramedic Certificate and Primary Instructor Certificate, and suspension of Rosenau's EMT Certificate for seven years. *Id.*

19. Here, there is evidence of continuing conduct of substance abuse that Petitioner allowed to continue until it directly endangered his patients. Petitioner displayed an ongoing pattern of substance abuse, which resulted in a conviction related to his operation of a vehicle while intoxicated, and a work schedule changed due to his substance-abuse related absenteeism, all prior to the incident that led to this disciplinary action. Petitioner's irresponsible conduct continued over a notable period that culminated in the direct endangerment of his patient, his colleagues, himself, and every member of the public he encountered when he reported for duty still intoxicated from the night before on two hours' sleep. Petitioner allowed his condition to escalate until finally he reported for work intoxicated with concerns about his ability to perform the very essence of his job—life support—and chose to drive instead. No matter what Petitioner did that morning, no patient or colleague was safe with him. This merits the severest sanction. *See also, In re: Tonya Moore*, Cause Number DHS-1727-EMSC-001 (holding that revoking licensee's primary instructor certification for seven (7) years and suspending her paramedic license and EMT certification for two years when licensee was discovered taking non-narcotic medications from her employers locked storage room while on duty).
20. Petitioner argues that revocation is inappropriate because then he will bear the burden of reeducation as well as requalifying for his license and certification. However, as the nature and duration of the of the sanction is appropriate, it is also appropriate that Petitioner reeducate

himself for his profession if he wishes to return to it, for it is likely that his skills will not be current after the seven (7) year period of his revocation.

21. The ALJ concludes that Respondent has shown that the sanctions of revocation for seven (7) years of Petitioner's Paramedic License and EMT Certificate are appropriate.


## DECISION AND NON-FINAL ORDER

Respondent has demonstrated by a preponderance of the evidence that Petitioner has violated the requirements of Indiana Code Article 16-31, specifically, but not limited to, Ind. Code § 16-31-3-14(a)(7) and (a)(8) for practicing under the influence of alcohol, being unfit while working, and acting in such a manner that endangered the health or safety of emergency patients, his co-workers, and members of the general public. Petitioner is therefore subject to disciplinary sanctions found in Ind. Code § 16-31-3-14(b).

Respondent has demonstrated by a preponderance of the evidence and reference to precedent that its action in revoking Petitioner's Paramedic License and his EMT Certificate for a period of seven (7) years is the appropriate sanction.

The Indiana Emergency Medical Services Commission is the ultimate authority in this matter. It will consider this non-final order in accordance with the provisions of Indiana Code §§ 4-21.5-3-7 thru -29 and the Notice of Non-Final Order also issued today.

Date: May 31, 2018



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A copy of the foregoing **Findings Of Fact, Conclusions Of Law, And Non-Final Order** was served upon the following parties and attorneys of record on May 31, 2018:

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